



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 2 2006

VIA FIRST-CLASS MAIL

Paul Aronsohn

Fort Lee, NJ 07024

RE: MUR 5693

Dear Mr. Aronsohn:

On December 13, 2005, the Federal Election Commission ("Commission") notified you of the complaint in MUR 5693 alleging violations of certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided you with a copy of the complaint. Additionally, on February 6, 2006, the Commission notified you of the complaint in MUR 5704 alleging violations of certain provisions of the Act, and provided you with a copy of the complaint.

After reviewing the allegations contained in those complaints, information supplied by you, and publicly available information, the Commission on October 26, 2006, found that there is reason to believe you violated 2 U.S.C. §§ 432(e)(1), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination. Additionally, on October 26, 2006, the Commission merged MUR 5704 into MUR 5693. Please direct all future correspondence to the Commission using the appropriate designation of MUR 5693.

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Mr. Paul Aronson
MUR 5693
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

Sincerely,


Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Paul Aronsohn

MUR 5693

I. INTRODUCTION

The complaints in MURs 5693 and 5704 allege that Paul Aronsohn violated the Act by inappropriately utilizing the "testing the waters" exemption to raise money without timely registering with the Commission or filing the proper reports. Both complaints have been merged into a single matter, MUR 5693.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Paul Aronsohn announced his "Congressional Exploratory Campaign" on April 11, 2005. On January 23, 2006, he filed his initial Statement of Candidacy with the Commission.¹ Subsequently, on February 16, 2006, the Aronsohn Committee filed its initial Statement of Organization. The Aronsohn Committee's first filed report, the 2006 April Quarterly Report, disclosed receipts and disbursements made as early as April 2005, or more than nine months before Aronsohn filed his Statement of Candidacy.

Aronsohn maintains he was "testing the waters" between April 2005 and January 2006. In his response to both MURs, he states that New Jersey's 5th Congressional District has leaned in favor of the Republican party in the last fourteen terms, including electing the incumbent, Scott Garrett, in the last two elections. Additionally, in the last election, the incumbent had raised more

¹ Aronsohn filed an amended Statement of Candidacy on February 23, 2006 to include information detailing whether he intended to expend personal funds in excess of the threshold amount, and if so, what amount.

1 than twice the amount of money as his opponent. Based on these facts, Aronsohn maintains that it
2 was essential for him to ensure a significant financial base of support to have a chance of defeating
3 Garrett. Hence, he "decided to undertake an exploratory campaign only until it was clear that [he]
4 could raise the necessary resources and therefore be a viable candidate." Aronsohn MUR 5693
5 Response at 2.

6 During the purported "exploratory period," Aronsohn drafted an October 27, 2005
7 solicitation letter that he claims was not sent to the general public, but rather to individuals in his
8 personal rolodex and to a limited number of potential supporters whose names were provided to him
9 by friends. Both the MURs 5693 and 5704 complaints cite this letter as evidence that Aronsohn had
10 made his decision to run for Federal office by this time. The letter, written on Aronsohn
11 "Congressional Exploratory Campaign" letterhead, makes the following relevant statements:

- 12 • Granted, this will be a tough fight. Defeating an incumbent is
13 never easy. But I have the energy, the experience, and the
14 determination to win this race. And as evidenced by the attached
15 news article, I am ready to begin fighting for our future ... now.
16 (Ellipsis in original).²
17
- 18 • As a member of the Clinton Administration, I spent several years
19 working on national security and international affairs—having served
20 three U.S. Ambassadors to the United Nations: Madeleine Albright,
21 Bill Richardson, and Richard Holbrooke.
22

23 Currently, I work for one of the most respected healthcare companies
24 in the world, Pfizer Inc., where I promote greater access to life enhancing,
25 life saving medicines.
26

27 Now, I want to take this experience and my passion for public service
28 and put them to work for the people of New Jersey's 5th Congressional
29 District.

² The "attached news article" is from the September 11, 2005 edition of *The Star Ledger*. It focuses on Representative Garrett's vote against a bill providing money for Hurricane Katrina relief, and his explanation of that vote. It identifies Aronsohn as a "Democratic challenger" to Garrett, and quotes Aronsohn as saying of the vote, "It's outrageous ... It would have been the right thing to send a message to the people in the Gulf Coast that the nation stands behind them in unison. But he lacks the compassion and decency to do that."

- This is a critical moment in our campaign. Every dollar we receive in the next few weeks can help us prepare for this fight against Scott Garrett and will demonstrate to everyone that Democrats are serious about this race—that with an energetic, experienced, moderate Democrat on the ticket, we have what it takes to win! (Emphasis in original).
- We have come a long way in just a few short weeks. And with your support, we can go the distance.

Additionally, three Aronsohn press releases, which were dated July 11, September 1, and November 1, 2005, focus on the amount of contributions he had raised and other activities. Both of the Aronsohn complainants cite and attach these press releases as further evidence of his going beyond merely evaluating the feasibility of his candidacy. Among the three, the November 1, 2005 press release appears to be the one that most strongly implicates the testing the waters exemption as it makes comparisons to the amount of funds raised by the Aronsohn Committee to date and those raised by the prior Democratic nominee during the entire election cycle:

Well, we've crossed our first major threshold: With more than a year until the election, the campaign has already received about 225 individual contributions and has raised about \$100,000!!!

To put this in perspective, remember ...

- ✓ the last 5th District nominee had only about 150 individual contributions throughout the entire election cycle; and
- ✓ the last 5th District Democratic nominee had \$0 by this time in the last election cycle. (Emphasis in original).

In other words, we are ahead of the curve and moving forward ... fast.

B. Analysis

Under the Act, an individual becomes a "candidate" when he or she has received or made in excess of \$5,000 in contributions or expenditures. 2 U.S.C. § 431(2). However, the Commission's

1 regulations provide that the terms "contribution" and "expenditure" do not include funds received or
2 payments made solely to determine whether an individual should become a candidate. 11 C.F.R.
3 §§ 100.72(a) and 100.131(a). Thus, an individual may raise or spend more than \$5,000 without
4 becoming a candidate if his or her activities are permissible "testing the waters" activities, which
5 include conducting polls, making telephone calls, and travel.³ *Id.*

6 However, when an individual raises or spends more than \$5,000 and engages in activities
7 indicating that he or she has decided to run for a particular office, the "testing the waters" exemption
8 is no longer available. These activities include: raising funds in excess of what could reasonably be
9 expected to be used for exploratory activities or activities designed to amass funds to be spent after
10 becoming a candidate; making or authorizing written or oral statements that refer to the individual
11 as a candidate for a particular office; or conducting activities in close proximity to the election or
12 over a protracted period of time. 11 C.F.R. §§ 100.72(b) and 100.131(b).

13 According to the Aronsohn Committee's first filed report—the April 2006 Quarterly
14 Report—Aronsohn had raised \$5,000 by April 19, 2005 and therefore met the monetary threshold
15 for becoming a candidate. No publicly available information, however, indicates that he had
16 decided to run for Federal office as of that date. Even Aronsohn's announcement that he had raised
17 \$100,000 in funds by November 1, 2005 does not, by itself, mean that he had crossed into candidate
18 status. The Commission previously has failed to find that an individual violated the testing the
19 waters provisions for raising even greater sums. *See, e.g.*, MUR 2710 (Judge Harvey Sloane)
20 (raising \$200,000 in funds while testing the waters did not trigger candidate status); MUR 5703

³ The Commission has emphasized the narrow scope of this exemption to the Act's disclosure requirements. *See* Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (1985) ("The Commission has, therefore, amended the rules to ensure that the 'testing the waters' exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act . . .").

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(Martha T. Rainville) (raising \$100,000 in contributions was insufficient to find that candidate was no longer testing the waters).⁴

Nevertheless, Aronsohn apparently crossed the line from exploring a possible campaign into actual candidacy through statements made in the October 27, 2005 solicitation letter. We do not know how many letters Aronsohn sent, or how many of the recipients had expressed an interest in his campaign, but it is primarily the content of the letter indicating his decision to run for office that is critical here. Aronsohn indicates that this letter should be discounted because it was not sent to the general public, but rather only to individuals in his rolodex and others who might be "potential supporters." However, that distinction is not determinative. In Advisory Opinion 1981-32, in discussing the parameters of the "testing the waters" exemption, the Commission considered a prospective candidate's correspondence to a person who has indicated an interest in his campaign. While not concluding that such correspondence is dispositive of whether a prospective candidate has crossed the line into actual candidacy, it noted that because the reason for corresponding with such a person is "reinforcement of his or her initial indication of political support[,] ... the activity appears less oriented to ascertaining whether there is an initial base of political support adequate to launch a campaign effort, and more oriented to shoring up a base already identified that will sustain an actual campaign effort."

The Commission previously has pursued Enforcement matters involving statements in solicitation letters that showed that an individual had decided to run for Federal office. In MUR 2262 (M.G. (Pat) Robertson), the Commission determined that Pat Robertson had become a

⁴ See also MUR 4809 (Ball) (raising approximately \$18,000 in contributions and making approximately \$7,400 in expenditures was insufficient to find that candidate was no longer testing the waters). The Commission has, on occasion, found that a candidate who raised substantial amounts of money similar to Aronsohn was no longer testing the waters. However, in those cases, the dispositive fact was that the candidate had also made public statements indicating they had decided to run for Federal office. See MUR 5363 (Sharpton); MUR 5251 (Friends of Joe Rogers).

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1 candidate, and was no longer "testing the waters," where his solicitation letter stated that he had
2 reached his "qualified" decision to seek the Presidential nomination, noting "in response to tens of
3 thousands of people across America ... clapping and shouting, urging me- 'GO FOR IT, Pat! ... I
4 AM READY TO GO FOR IT. Now it's up to you." (Emphasis in original). Likewise, in MUR
5 5251 (Friends of Joe Rogers), the Commission concluded that Joe Rogers had become a candidate
6 where the contents of his solicitation letter requested funds to "jump-start my campaign treasury"
7 and informed readers that because of his close working relationship with the President and the
8 Congressional leadership, "I will immediately work for the benefit of Colorado" and "look forward
9 to serving you in the next United States Congress."⁵

10 Similarly, Aronsohn's statements in his October 27, 2005 solicitation letter indicate that he
11 had decided to become a candidate by that date. Just as Robertson stated in his letter that he was
12 "ready" to run for office, Aronsohn stated in his letter that he is "ready to begin fighting for our
13 future ...now." Additionally, like Rogers' statement in his letter that because of his close working
14 relationships with the President and leaders in Congress, he "will immediately work for the benefit
15 of Colorado," Aronsohn's statement that he "[n]ow" wants to take his political and business

⁵ Joe Rogers' November 2001 fundraising letter made the following statements:

I know that I will effectively serve your interests in Congress and that because of the close working relationship with the President and the leadership of Congress that I will immediately work for the benefit of Colorado. Won't you please fill out the enclosed reply card indicating how you can help my campaign? (emphasis in original).

[T]he early contributions are what help candidates get organized so they can run the most effective campaigns. That's why I am asking for your help now, nearly a year before the general election. If you would send your check or complete the enclosed credit card donation form within the next day or two, you will help me jump-start my campaign treasury." (emphasis in original).

[T]hank you in advance for your help in this new campaign. With your support I look forward to serving you in the next United States Congress.

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1 experience and his passion for public service and "put them to work for the people of New Jersey's
2 5th Congressional District," demonstrates that he is no longer exploring his viability as a candidate,
3 but has decided to run.

4 Finally, as with Rogers' statement about using funds to "jump-start [his] campaign treasury,"
5 the statement in Aronsohn's letter that "[e]very dollar we receive in the next few weeks can help
6 us prepare for this fight against Scott Garrett," shows he has decided to run. (Emphasis in
7 original). By indicating that the solicited funds will be used to campaign against a specifically
8 named opponent, Aronsohn effectively communicates that he is committed to the race, and no
9 longer just evaluating the viability of his candidacy. Further, this same statement indicates an
10 intention to amass campaign funds to spend after he becomes a candidate, an example that the
11 regulations cite as indicative that an individual has decided to become a candidate. See 11 C.F.R.
12 § 100.72(b)(2). Moreover, the Aronsohn Committee's November 1, 2005 press release, comparing
13 the number of contributors to date with those the last Democratic nominee had for the entire
14 election cycle, reinforces the conclusion inherent in his October 27, 2005 letter. By stating, with
15 more than a year before the general election, that his exploratory campaign had already received
16 more individual contributions than the last democratic nominee had received to date and during the
17 entire election cycle, and that "we are ahead of the curve and moving forward...fast," Aronsohn
18 suggests not only that he is already a more viable contender than the prior nominee, but that he is
19 raising funds for the election, not simply to assess the potential strength of his financial base, should

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1 he decide to run.⁶

2 In sum, it appears from the statements in Aronsohn's October 27, 2005 solicitation letter that
3 by that date he had decided to run for office. Since he had raised in excess of \$5,000 by then, he
4 was a "candidate" pursuant to 2 U.S.C. § 431(1). Achieving "candidate" status triggers registration
5 and reporting requirements for the candidate. Within 15 days of becoming a candidate, the
6 individual must file a statement of candidacy with the Commission that designates the candidate's
7 principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a). Thus,
8 Aronsohn should have filed his Statement of Candidacy within 15 days of his October 27, 2005
9 letter, or by November 11, 2005, designating his principal campaign committee. As noted,
10 Aronsohn did not file his Statement of Candidacy until January 23, 2006, more than two months
11 later than required.

12 Therefore, there is reason to believe that Paul Aronsohn violated 2 U.S.C. § 432(e)(1).

⁶ It is possible that an independent argument could be made that Aronsohn lost the "testing the waters" exemption at some point during his nine month "exploratory period," because of the protracted period of time. *See* 11 C.F.R. §§ 100.72(b)(4) and 100.131(b)(4). However, given that Aronsohn's October 27, 2005 letter presents a definite date when he crossed over into candidate status, we need not address this issue further. Additionally, while the Commission made reason to believe findings as to individuals whose exploratory periods were even longer than Aronsohn's, in MURs 2262 (Robertson) (over one year), 5251 (Joe Rogers) (ten months), and 5363 (Sharpton) (16 months), the findings were based on other facts.

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